IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 25706 of 2005

Between:

Nandikonda Seetha Ramaswamy

..... PETITIONER

AND

The A.P.Eastern Power Distribution Co.Ltd.,

Visakhapatnam rep by its. the Chairman Cum Managing Director,
Corporate Office, Daba Gardens,

Visakhapatnam (PO) and District and another

.....RESPONDENTS

ORDER:

Seeking a Mandamus, declaring the impugned provisional notice in D.No.1819/2005, dated 19.10.2005 issued by the 2nd respondent, as illegal and arbitrary, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents.

The petitioner questions the impugned provisional assessment order dated 19.10.2005 issued by the 2nd respondent, provisionally assessing the value of the energy pilferaged by the petitioner at Rs.67,374/- and in disconnecting the service connection and further directing to pay half of the said amount i.e. Rs.33,687/- for restoration of the power supply, apart from paying Rs.50/- towards reconnection charges.

Admittedly, the said impugned order is only a provisional assessment order and as per Section 126 of the Electricity Act, 2003, the respondents cannot disconnect the service connection by making provisional assessment. Only after passing final assessment order, they can disconnect the power supply and direct the petitioner to pay pilferage amount. The matter is squarely covered by the judgment of the Division Bench of this Court in Writ Appeal Nos.452 and 477 of 2004, dated 11.03.2004, wherein the Division Bench held that the authorities have no power to disconnect the electricity while issuing provisional assessment, and further held that provisional assessment order shall have to be treated as a show cause notice, against which the consumer is entitled to have an opportunity of hearing before passing final orders by the concerned authorities. Accordingly, the impugned notice shall be deemed to have been treated as a notice under Section 126 of the Electricity Act, 2003.

Having regard to the facts and circumstances of the case, the impugned order is directed to be treated as a show cause notice and the petitioner is permitted to

submit explanation within 6 (six) days from today, and on filing such explanation, the respondents may consider and dispose of the same, in accordance with law, after giving a reasonable opportunity to the petitioner. As the disconnection of power supply to the petitioner's house is illegal, the respondents are directed to restore the power supply to the petitioner's house forthwith, without insisting upon payment of any part of the amount covered by the impugned notice dated 19.10.2005.

With the above observations, the Writ Petition is disposed of. No order as to costs.

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V.ESWARAIAH,J

Dated: 02.12.2005

Dsr

Note:

Issue CC by 03.12.2005

B/o

Dsr